

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>205 230</sup> OF 2007

BETWEEN: F. E. PENALOSA HOOKER PLAINTIFF

AND: (1) KAREN McKEE  
(2) JAMES COLEMAN EBANKS DEFENDANTS

WRIT OF SUMMONS

TO: Ms. Karen McKee  
c/o 46 Meadow Avenue  
West Bay  
Grand Cayman.

AND TO: James Coleman Ebanks  
c/o 46 Meadow Avenue  
West Bay  
Grand Cayman.



**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ of Summons on you, counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

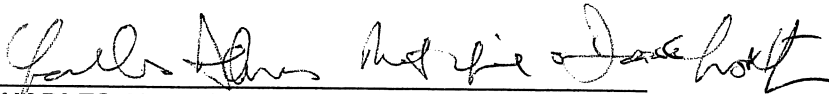
If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 31<sup>st</sup> day of May 2007.

NOTE:-This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

  
**CHARLES ADAMS, RITCHIE & DUCKWORTH**  
**ATTORNEYS-AT-LAW FOR THE PLAINTIFF**

This Writ has been issued by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is P.O. Box 709, Zephyr House, 122 Mary Street, George Town, Grand Cayman KY1-1107, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>230</sup> OF 2007

BETWEEN: F. E. PENALOSA HOOKER PLAINTIFF  
AND: (1) KAREN McKEE  
(2) JAMES COLEMAN EBANKS DEFENDANTS

ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

Important. Read the accompanying direction and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box).  
 Yes  No

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box).  
 Yes

Service of the Writ is acknowledged accordingly

(Signed) .....  
[Attorney] for  
Address for Service:

**Notes on address for service**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by Plaintiff's attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Charles Adams, Ritchie & Duckworth  
P.O. Box 709 G.T.  
122 Mary Street, Zephyr House  
George Town  
Grand Cayman  
Cayman Islands

Indorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.

Filed by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is that of its said Attorneys-at-Law, P.O. Box 709 G.T., Zephyr House, 122 Mary Street, George Town, Grand Cayman, Cayman Islands.

## Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a *guardian ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2007

**BETWEEN:** F. E. PENALOSA HOOKER **PLAINTIFF**

**AND:** (1) KAREN McKEE  
(2) JAMES COLEMAN EBANKS **DEFENDANTS**

**STATEMENT OF CLAIM**

1. The Plaintiff is the sole registered owner of the property legally described in the Land Registry as Registration Section West Bay North West, Block 4D, Parcel 347 and having the civic address as No. 46 Meadow Avenue, West Bay, Grand Cayman (the "Premises"). As at 27 November 2004 the Premises were owned by the Plaintiff and her now deceased spouse, Mr. George William Hooker Sr. as joint tenants.
2. The First and Second Defendants are resident in the Cayman Islands.
3. By an agreement made on or about 27 November 2004 between the Plaintiff and Mr. George William Hooker Sr. of the one part (as "*the Landlord*") and the First and Second Defendants of the other part (as "*the Tenant*"), the Plaintiffs agreed to grant and the Defendants agreed to take a lease of the Premises in its existing state and condition at that time, together with furnishings, fittings and fixtures thereto for a 2 year term commencing on 1 December 2004 with an option to purchase the Premises subject to the terms and conditions of the Agreement and the Schedule thereto (the "*Agreement*"). The Plaintiff will refer to the Agreement at the trial of this action for its legal terms and effect.

4. By the Agreement and in consideration of the payment by the Defendants to the Plaintiff of the sum of CI\$20,000.00 on or about 27 November 2004, the rent was fixed at the sum of CI\$1,600.00 payable monthly in advance on the first day of each month commencing 1 December 2004 and each successive month thereafter for a period of 2 years, with the amount of CI\$1,250.00 being apportioned to the purchase price of the Premises provided the terms and conditions of the Agreement were met. The Completion date for the exercise of the option to purchase, subject to the Defendants complying with the terms and conditions contained in the Agreement, was 30 November 2006.
  
5. By the Agreement, the Defendants covenanted to surrender all sums paid after the expiry of 7 days of the first day of each successive month commencing 1 December 2004 as rent. Further the Defendants covenanted that in the event of rent or any part thereof becoming due and unpaid for 3 consecutive months the Plaintiff would be allowed to re-enter the Premises at any time thereafter and to keep all payments made by the Defendants to the Plaintiff as rent and without prejudice to the Plaintiff's right of action in respect of any antecedent breach of the Agreement by the Defendants.
  
6. By the Agreement the Defendants further covenanted to, *inter alia*:
  - a). permit the Plaintiff and his agent to enter upon the Premises to:
    - inspect the condition thereof; and
    - execute necessary repairs or alterations;upon giving reasonable notice, save in cases of emergency;
  
  - b). keep the Premises, including the drains, soil and other pipes and sanitary and water apparatus in good and substantial repair;

- c). keep the fittings and appliances in good repair; not remove them; replace articles lost, damaged or destroyed with items of equal value, reasonable wear and tear excepted;
- d). pay the suppliers for all charges for water, electricity, telephone, gas and other utilities consumed on the Premises;
- e). keep the buildings and ground clean and tidy;
- f). yield up the Premises with fixtures and additions thereto in tenantable repair and condition at the determination of the tenancy;
- g). indemnify the Plaintiff against all damage, costs, expenses, actions, proceedings, claims and liabilities against or suffered by the Plaintiff arising out of any breach or non-observance by the Defendants of the covenants, conditions or provisions of the Agreement.

7. The Plaintiff by the Agreement covenanted to:

- a). allow the Defendants to peaceably hold and enjoy the Premises, provided that they pay the rent in accordance with the terms of the Agreement and comply with the covenants contained in the Agreement;
- b). insure the Property, including chattels, fittings, furniture, fixtures and equipment against hurricanes, floods, fire and all other risks.

8. Provided that the Defendants complied with the terms of the Agreement, and upon payment of the purchase price as set out under the First Schedule to the Agreement as follows the Plaintiff covenanted to transfer the Premises to the Defendants with absolute title:
- i) Payment of CI\$20,000.00 on or before 24 November 2004;
  - ii) Payment of CI\$30,000.00 payable by way of 24 equal monthly instalments of CI\$1,250.00 between 1 December 2004 and 30 November 2006;
  - iii) Payment of CI\$210,000.00 on or before 30 November 2006.
9. By Clause 10 of the First Schedule to the Agreement, the Defendants were permitted to register a Caution on the Land Register in relation to the Premises which would be removed in the event of the Agreement being rescinded or otherwise terminated.
10. The Defendants paid the rent for the month of December 2004 pursuant to the terms of the Agreement on or about 1 December 2004. In breach of the Agreement, the Defendants failed to pay rent for the following months on or before the first day of each month and in the instances identified in the table below in bold, paid rent after the expiry of 7 days following the due date:

<i>Rent Period</i>	<i>Due Date</i>	<i>Date of Payment</i>	<i>Amount of Payment</i>
January 2005	1 Jan. 2005	<b>9 March 2005</b>	1,600.00
February 2005	1 Feb. 2005	<b>26 May 2005</b>	6,400.00
March 2005	1 March 2005	" " "	-

April 2005	1 April 2005	" " "	-
May 2005	1 May 2005	" " "	-
August 2005	1 Aug. 2005	<b>15 Aug. 2005</b>	1,600.00
September 2005	1 Sept. 2005	<b>13 Sept. 2005</b>	1,600.00
October 2005	1 Oct. 2005	<b>31 Oct. 2005</b>	1,600.00
December 2005	1 Dec. 2005	<b>10 Feb. 2006</b>	3,200.00
January 2006	1 Jan. 2006	" " "	-
February 2006	1 Feb. 2006	<b>29 March 2006</b>	1,600.00
March 2006	1 March 2006	<b>29 March 2006</b>	1,600.00
April 2006	1 April 2006	<b>2 May 2006</b>	1,600.00
May 2006	1 May 2006	<b>29 June 2006</b>	1,600.00
June 2006	1 June 2006	<b>29 Aug. 2006</b>	1,600.00
July 2006	1 July 2006	<b>12 Oct. 2006</b>	6,400.00
August 2006	1 Aug. 2006	" " "	-
September 2006	1 Sept. 2006	" " "	-
October 2006	1 Oct 2006	" " "	-
November 2006	1 Nov. 2006	Nil	Nil.

11. The Plaintiff has applied the full amount of payments set out in the table at paragraph 10 above towards rent in compliance with the Agreement.
12. The Defendants have not paid the amount of CI\$1,600.00 being rent due for the month of November 2006 and have made no further payment whatsoever to the Plaintiff.
13. Further and in breach of the Agreement, the Defendants have not paid to the Plaintiff the additional sum of CI\$210,000.00 being the sum due by 30 November 2006.

14. On or about 14 September 2005 the Plaintiff was notified by the Defendants of a water leak resulting in the Defendants incurring costs in excess of CI\$5,000.00 between the period March 2005 and August 2005. The Plaintiff was informed by the Second Defendant that the leakage had been traced to underground pipes which could impact the foundation of the Premises. The Plaintiff has requested access to the Premises for the purpose of identifying the source of the leak and to carry out the necessary repair work but the Defendants have refused to allow the Plaintiff and/or her agent access thereto.
15. In breach of the Agreement, the Defendants have further refused to allow the Plaintiff and/or her agent to enter the Premises to examine the condition thereof and to execute such repairs as are necessary.
16. The Defendants have, as recently as on or about 17 March 2007 and in breach of the Agreement, refused access to the Plaintiff and/or her agent, for the purpose of conducting inspection of the Premises and on that occasion, sought the assistance of the Royal Cayman Islands Police to have the Plaintiff and her agent removed from the Premises.
17. On 8 April 2005, 21 August 2006 and again on 1 December 2006, the Plaintiff issued a notice accepting termination of the Agreement by the Defendants by virtue of the Defendants' breach of the covenant to pay rent pursuant to the Agreement and providing a date for eviction. The Defendants have failed to vacate the Premises as required.
18. On 9 December 2006, the Plaintiff through an agent, commenced an action in the Summary Court claiming the sum of CI\$3,200.00 together with interest thereon and costs. The Plaintiff has applied to discontinue those proceedings.

19. The Defendants have breached the Agreement by virtue of their non-payment of rent due pursuant to the Agreement.
20. Further and in the alternative, the Defendants have breached the Agreement by virtue of their failure/refusal to complete on or before the 30 November 2006. The Plaintiff claims forfeiture of the deposit as against the Defendants.
21. On 16 March 2007 the Plaintiff issued a Landlord's Notice to Terminate pursuant to section 51 *Registered Land Law (2004 Revision)* and under Clause 4 of the Agreement. In the alternative, the Plaintiff issued a Notice to Quit on the basis that the Defendants were holding over. Service of the Notices was effected upon the Defendants on 16 March 2007. The Plaintiff will refer to the Notices referred to herein at the trial of this action for their legal term and effect.
22. Notwithstanding the expiry of the Notice the Defendants have refused to vacate the Premises and now remain in occupation thereof as trespassers therein.
23. On or about November 2004, the Plaintiff requested that the Defendants keep her pet dog, a German shepherd until she was able to make alternative arrangements for her pet. The Plaintiff has requested that the Defendants return the dog but the Defendants have refused to do so.
24. The Plaintiff further claims the return of her pet dog.

**AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS JOINTLY AND SEVERALLY:**

1. Possession of the said Premises;
2. Rent in the sum of CI\$1,600.00 for the month of November 2006;

3. Rent arrears and/or *mesne* profits at the amount of CI\$9,600.00 for the months of December 2006 through May 2007;
4. *Mesne* profits at the rate of CI\$19,200.00 per annum from the date of service of the Statement of Claim until possession be given up;
5. The Removal of the Caution registered on the Land Registry in favour of the Defendants;
6. Pre and post judgment Interest on the said rent and the said *mesne* profits;
7. Damages to be assessed upon possession by the Plaintiff;
8. Further or other relief;
9. Costs.

Dated this 31<sup>st</sup> day of May 2007

  
**CHARLES ADAMS, RITCHIE & DUCKWORTH**  
Attorneys-at-Law for the Plaintiff

This Statement of Claim was issued by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is that of its said Attorneys-at-Law, P.O. Box 709, Zephyr House, 122 Mary Street, George Town, Grand Cayman KY1-1107, Cayman Islands.